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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,790	03/19/2004	Masaaki Oka	81707 [PW040003-US]	8890
22342 7590 12/08/2009 FITCH EVEN TABIN & FLANNERY 120 SOUTH LASALLE STREET SUITE 1600 CHICAGO, IL 60603-3406				
EXAMINER				
TRUONG, CAMQUY				
ART UNIT		PAPER NUMBER		
2195				
MAIL DATE		DELIVERY MODE		
12/08/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/804,790	Applicant(s) OKA, MASAOKI
Examiner CAMQUY TRUONG	Art Unit 2195

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 November 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: None.
 Claim(s) objected to: None.
 Claim(s) rejected: 1-16.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
 13. ☐ Other: _____.

/Meng-Ai An/
Supervisory Patent Examiner, Art Unit 2195

Continuation of 11, does NOT place the application in condition for allowance because: Applicant amendment filed on 11/4/09 has been considered but they are not persuasive:

Applicant argued in substance that:

(1)Submits this portion of Rabinovich fails to describe or suggest "load measurement means for measuring an actual magnitude of a load of an information processing requested".

(2)Rabinovich also fails to describe or suggest "determination means for determining at least one available device by comparing the actual magnitude of the load measured by the load measurement means and the metric information stored in said metric information management means".

(3) There is no discussion in the cited portion of Deng of a first list management means for measuring static capability information, equated with the metric information recited in claim 2, for the available servers, equated with the available devices recited in claim 2, and storing a list having one or more of the available servers, and a second list measurement means for measuring dynamic capability information for those devices in the first list, and further does not disclose a separate index list ranking the devices listed in the second list. Instead, Deng only describes a single list, i.e. capability vector 136.

(4)Neither of the references disclose "program execution means partitioned into a plurality of clusters."

Examiner respectfully traverses Applicant's remarks:

As to point (1), Rabinovich teaches load measurement means for measuring an actual magnitude of a load of an information processing requested (the distance metric measures, the cost of communicating between the requester and the host that stores a replica of the requested object, col. 7, lines 35-42).

As to point (2), Rabinovich teaches determination means for determining at least one available device by comparing the actual magnitude of the load measured by the load measurement means and the metric information stored in said metric information management means (the request distributor selects (determines) a host that stores a replica of the requested object to respond to the request based upon the request metric (the metric information stored in metric information management) and the distance metric of the host, col. 7, lines 42-47).

As to point (3), Deng teaches a first list management means for measuring static capability information and storing a list having one or more available servers (capability vector 136 contains the available servers, col. 6, lines 39-40 / applying a static rule to distribute the request to one of several server groups (a first list), col. 2, line 25), and a second list measurement means for measuring dynamic capability information for those devices in the first list a index list ranking the devices listed in the second list (a resource table (132) contains the available servers that are ranked according to specific ranking criteria..., col. 6, lines 34-38 / dynamic resource capability rules are applied to assign the request to server within a group (second list), col. 2, lines 25-29).

As to point (4), Rabinovich teaches distribute requests to plurality of servers (col. 6, lines 5-7). In addition, Deng teaches distribute the requests to one of several server groups (col. 2, lines 24-25).